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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/574,374

10/18/2006

Peter Hasenfuss

F-9055

2261

28107 7590 11/22/2010  
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EXAMINER

MOYER, DALE S

ART UNIT

PAPER NUMBER

3664

MAIL DATE

DELIVERY MODE

11/22/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/574,374	<b>Applicant(s)</b> HASENFUSS, PETER	
	<b>Examiner</b> Dale Moyer	<b>Art Unit</b> 3664	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 August 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 16-35 is/are pending in the application.
- 4a) Of the above claim(s) 16-26 and 28-35 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 27 is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/26/2010</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Status of the Application***

1. This final office action is in response to the applicant's amendment received by the United States Patent and Trademark Office on 27 August 2010.
2. Claims 1-35 have been presented in the application, of which, claims 1-15 are cancelled, claims 16, 18, 27, and 29 are currently amended, claims 17, 19-26, 28 and 30-34 were previously presented, and claim 35 is new. Accordingly, pending claims 16-35 are addressed herein.

### ***Allowable Subject Matter***

3. Claim 27 is allowed.

### ***Election/Restrictions***

4. Allowed claim 27 is directed to a first species that is patentably distinct from a second species as characterized by claims 16-26 and 28-35. The species are distinct at least because the second species requires two energy take-off devices. In addition, the species are not obvious variants of each other based on the current record.
5. Restriction is proper and would have been proper if the present claims had been originally presented since there is a search and/or examination burden for the patentably distinct species as set forth above because the patentably distinct species require a different field of search.
6. Since the applicant has received an action on the merits for the originally presented invention of the first species, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 16-26 and

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28-35 are withdrawn from consideration as being directed to a non-elected invention.

See 37 CFR 1.142(b) and MPEP § 821.03.

7. A telephone call was made to Frank J. Jordan on 17 November to discuss allowance of the invention elected by original presentation and cancellation of the non-elected invention (claims 16-26 and 28-35) by Examiner's Amendment. However, no immediate agreement was reached.

8. This application is in condition for allowance except for the presence of claims 16-26 and 28-35 directed to a non-elected invention. Applicant is given ONE MONTH or THIRTY DAYS from the date of this letter, whichever is longer, to cancel the noted claims or take other appropriate action (37 CFR 1.144). Failure to take action during this period will be treated as authorization to cancel the noted claims by Examiner's Amendment and pass the case to issue. Extensions of time under 37 CFR 1.136(a) will not be permitted since this application will be passed to issue.

The prosecution of this case is closed except for consideration of the above matter.

### ***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dale Moyer whose telephone number is (571)270-7821. The examiner can normally be reached on Monday through Thursday from 10AM to 4PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Khoi H. Tran can be reached on (571)272-6919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dale Moyer/  
Examiner, Art Unit 3664

/KHOI TRAN/  
Supervisory Patent Examiner, Art Unit 3664